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Viewing cable 05SANJOSE2249, COSTA RICA'S POSITION PAPER ON THE BORDER DISPUTE

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Understanding cables

Every cable message consists of three parts:

- The top box shows each cable's unique reference number, when and by whom it originally was sent, and what its initial classification was.
- The middle box contains the header information that is associated with the cable. It includes information about the receiver(s) as well as a general subject.
- The bottom box presents the body of the cable. The opening can contain a more specific subject, references to other cables ([browse by origin](#) to find them) or additional comment. This is followed by the main contents of the cable: a summary, a collection of specific topics and a comment section.

To understand the justification used for the classification of each cable, please use this [WikiSource](#) article as reference.

Discussing cables

If you find meaningful or important information in a cable, please link directly to its unique reference number. Linking to a specific paragraph in the body of a cable is also possible by copying the appropriate link (to be found at the paragraph symbol). Please mark messages for social networking services like Twitter with the hash tags **#cablegate** and a hash containing the reference ID e.g. **#05SANJOSE2249**.

Reference ID	Created	Released	Classification	Origin
05SANJOSE2249	2005-09-28 10:13	2011-08-30 01:44	CONFIDENTIAL	Embassy San Jose

Appears in these articles:

<http://www.nacion.com/2011-03-07/Investigacion/NotasDestacadas/Investigacion2704388.aspx>
<http://www.nacion.com/2011-03-07/Investigacion/NotaPrincipal/Investigacion2704402.aspx>
<http://www.nacion.com/2011-03-07/Investigacion/NotasSecundarias/Investigacion2704436.aspx>
<http://www.nacion.com/2011-03-07/Investigacion/NotasSecundarias/Investigacion2705536.aspx>

This record is a partial extract of the original cable. The full text of the original cable is not available.

C O N F I D E N T I A L SECTION 01 OF 02 SAN JOSE 002249

SIPDIS

E.O. 12958: DECL: 09/27/2015

TAGS: [PBTS](#) [PREL](#) [PINR](#) [ETRD](#) [CS](#) [NU](#)

SUBJECT: COSTA RICA'S POSITION PAPER ON THE BORDER DISPUTE

REF: A. SAN JOSE 02131

[1](#)B. SAN JOSE 01746

Classified By: Charge Russell L. Frisbie for reasons 1.4 (b) and (d)

[1](#)1. (C) While Costa Rican Foreign Minister Roberto Tovar and Nicaraguan Foreign Minister Norman Caldera met in San Jose September 27 to discuss the San Juan River border dispute, the Costa Rican MFA sent the following position paper to the U.S. and British (as current EU president) embassies. The paper is not for release to the GON or to the public.

Begin Text:

Outline

[1](#)1. Article 6 of the 1858 Treaty of Limits between Costa Rica and Nicaragua establishes that Nicaragua has the sovereignty and ownership of the San Juan River, but Costa Rica has on its waters the perpetual right of free navigation for purposes of commerce.

[1](#)2. In this regard, Costa Rica acknowledges that:

- a. The San Juan River belongs to Nicaragua.
- b. Nicaragua possesses the sovereignty on the River.

[1](#)3. However, Costa Rica has rights on that River, which Nicaragua does not recognize. Some of those Costa Rican rights are:

- a. the obligation (for Nicaragua) to allow Costa Rican boats and their passengers to navigate freely and without

impediment on the San Juan River for commercial purposes, including the transportation of passengers and tourism;

b. the obligation (for Nicaragua) not to impose any charges or fees on Costa Rican boats and their passengers for navigating on the River;

c. the obligation (for Nicaragua) to allow Costa Rica the right to navigate the San Juan River in official boats for supply purposes, exchange of personnel of the border posts along the right bank of the San Juan River, with their official equipment, including the necessary arms and ammunitions, and for the purposes of protection, as established in the pertinent instruments.

14. In light of the evident differences in the positions sustained by both countries, which have not been able to be resolved by diplomatic means, or through the peaceful dispute settlement mechanisms, the most adequate alternative among peace loving and respectful nations is to submit the issue before the International Court of Justice. In this regard, the Government of Nicaragua itself has expressed that "...the recourse of the peaceful mechanisms to resolve disputes between states is neither a hostile nor an unfriendly act. On the contrary, the recourse to the International Court of Justice is totally in accordance with the will of nations to live in peace, security and harmony".

15. Costa Rica is forced to present the application to the International Court of Justice before the 23rd of October, due to the fact that Nicaragua has presented a reservation to the Court's Jurisdiction which excludes the main legal instruments upon which Costa Rica bases its case.

16. To implement a "tax" to the Costa Rican exports to Nicaragua, as has been announced by Nicaraguan legislators, is not a valid reaction to the peaceful resolution of differences and does not conform to today's international realities. The consequences of such action could be:

- a. The stagnation of the Association Agreement between Central America and the European Union.
- b. The stagnation of the Central American Customs Integration.
- c. May jeopardize the CAFTA, which does not allow this type of measure.
- d. Might put in danger the survival of medium and small Costa Rican and Nicaraguan businesses, including the loss of jobs.

17. There is no possibility to extend the Alajuela 2002 agreement. The international advisors have indicated that we could jeopardize our rights, since for 3 more years Costa Rica would not be able to exercise them.

18. Costa Rica is willing to take the case to arbitration, if Nicaragua accepts it.

End text

12. (C) MFA adviser Sergio Ugalde stressed to acting DCM that there is no possibility of extending the three-year truce (point 7 in the position paper) because the legal and political risks are unacceptable. He said that the legal risk is that Costa Rica would be accepting through acquiescence that it has no right of free navigation on the San Juan. The political risk, he said, is that Tovar would be driven out of office. He noted that 11 members of the Legislative Assembly wrote Tovar a letter on September 22 urging a tough GOCR stance on the San Juan, and that former foreign minister Rodrigo Madrigal Nieto lambasted Tovar in a September 24 op-ed piece for signing the three-year truce in the first place.

13. (C) Ugalde said the MFA rejects the notion that Costa Rica's going to the ICJ will cause the Bolanos government to fall, noting that the GOCR has been Bolanos's biggest supporter. Ugalde claimed that the GON's strategy is to "play the crisis card" to get what they want, but no one has demonstrated how or whether a case before the ICJ, where Nicaragua has already filed a motion, will affect the balance of political forces in Nicaragua.

FRISBIE